

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SANDMAN TABLE TENNIS, LLC

**Case No. 11 CIV 1069 (KBF)**

Plaintiff/Counterclaim Defendant,

v.

INTERNATIONAL TABLE TENNIS  
FEDERATION

Defendant/Counterclaim Plaintiff,

v.

LIQUIDITY WORKS, INC.,

Counterclaim-Defendant.  
-----X

**DECLARATION OF JEFFREY BOGATIN IN OPPOSITION TO ITTF'S  
MOTION FOR SUMMARY JUDGMENT**

JEFFREY BOGATIN, pursuant to 28 U.S.C. § 1746, declares under the penalty of perjury, as follows:

1. I am the CEO of Sandman Table Tennis, LLC ("Sandman"). I am also the president of Liquidity Works, Inc. ("Liquidity"). I am fully familiar with the facts and circumstances stated herein based upon my own personal knowledge and the records of Sandman and Liquidity.
2. Sandman's use of "WORLD CHAMPIONSHIP OF PING PONG" is not an attempt to plagiarize ITTF's alleged mark.
3. Sandman was unaware of ITTF when it chose the name "WORLD CHAMPIONSHIP OF PING PONG." We chose the name because the "WORLD

CHAMPIONSHIP OF PING PONG” event was planned as a competitive championship event that featured players from all over the world.

4. In fact, Sandman obtained an exclusive license to “WORLD CHAMPIONSHIP OF PING PONG” to the extent it contains the term “Ping Pong,” for its events, from SOP Services, Inc., registered owner of United States trademarks for Ping Pong®, including the following Registration Nos. 0294408, 0520270, 0283766, and 0283767. The PingPong® marks were previously owned by Parker Brothers, Inc.

5. It was not until after “WORLD CHAMPIONSHIP OF PING PONG” was chosen that we began to organize the tournament and choose players. At that time we became aware of the ITTF, however we never knew that ITTF was using or claimed to own trademark rights in the phrase “WORLD CHAMPIONSHIPS.”

6. Sandman’s tournament is different than ITTF tournaments. “WORLD CHAMPIONSHIP OF PING PONG” events use what is called a hardbat racquet, whereas ITTF uses a sponge racquet. Using a hardbat racquet makes rallies longer and changes the game so that it is more focused on athleticism, and takes the element of equipmental advantages away. Using sponge racquets, which are used in ITTF tournaments, a player can gain advantage by using certain glues and rubbers because it affects the spin of the ball. Sandman’s tournaments give the players the same equipment so the challenge becomes more about their skill and athletic ability.

7. Sandman chose participants for our event from the 16 largest countries, using Olympic rankings and/or whether or not they had placed in a national championship in their country. Sandman had many players for the event that had won other competitions. Sandman’s statements that it had the best of the best was true. For

example one of our players was Mikael Appelgren had won championships in Europe and even competed in the Olympics. ITTF's complaint that a handful of competitors were not internationally ranked is illogical. It is common place for championships to have up and coming, but less well known athletes. If any competitive event excluded persons who had never won a championship before, they would effectively preclude new athletes from excelling into the upper echelon of that sport.

8. Sandman scheduled the "WORLD CHAMPIONSHIP OF PING PONG" event to take place on February 7-8, 2011 at the Las Vegas Hotels Palms Casino Resort.

9. Sandman heavily advertised the Event for months before it took place.

10. Despite the fact that Sandman had been advertising the event since October, no one from ITTF said anything to Sandman until four days (two business days) before the Event was scheduled to begin.

11. On February 3, 2011, Sandman received a cease and desist letter from ITTF claiming that it owned "all intellectual property rights related to the sport of table tennis" and claiming that it was the "only entity authorized to organize the official World Championship of table tennis worldwide." A true and correct copy of this cease and desist letter is annexed hereto as Exhibit "A."

12. Shortly thereafter Sandman received copies of similar cease and desist letters that ITTF had sent to Fox Sports Network and the Las Vegas Hotels Palms Casino Resort. True and correct copies of those letters are annexed hereto as Exhibit "B."

13. I also learned that ITTF had threatened players who would be competing in our event and told some of them that if they played in our event they would be disqualified from all future ITTF events, including Olympic qualifying events.

14. Players began contacting Sandman expressing their fear and concern that they would be disqualified from Olympic qualifying events and told Sandman that unless we worked something out, because of ITTF's threats they would be unable to compete at the event.

15. By this point, when Sandman received the cease and desist letters and communications from players, we had already paid for everything in connection with the event including, rooms, production, venue, advertising, banners, uniforms etc.

16. Sandman had also learned that the ITTF was telling players not to get on their flights to come to the event.

17. If the players did not play, Sandman could not have held the event.

18. Because of ITTF's threats to prevent Sandman players, who Sandman had contracts with, from competing, on February 5, 2011, Sandman agreed not to "market the event as the World Championship of Ping Pong on February 7th and 8th." This limited and temporary agreement was only made under economic duress.

19. Sandman informed ITTF that it would be difficult to change everything at the last minute as it was only two days before the event.

20. Sandman tried its best to change the name for February 7th and 8th only. Sandman changed the website, reprinted the sign for the front of the venue, sat down with the players and explained that the event name had been changed on February 7th and 8th and even sent out a press release.

21. Unfortunately Sandman could not get all of the signs down, and we could not get the television listing, tables, jerseys and tickets changed because they had already been finished and printed.

22. I never agreed to change the name of the event on a permanent basis. The limited agreement was made and I expressly understood it to mean that Sandman was agreeing not to market and promote the Event under “WORLD CHAMPIONSHIP OF PING PONG” for February 7 and 8, 2011, only.

23. Shortly thereafter, on or about February 16, 2011 Sandman commenced the instant action for declaratory judgment that our “WORLD CHAMPIONSHIP OF PING PONG” mark does not infringe on any alleged rights ITTF claims to have, that the limited agreement was void and unenforceable, and for injunctive relief to stop ITTF from retaliating against players who participate in our events and prevent ITTF from wrongfully interfering without contracts in the future.

24. Liquidity has no involvement with the marketing, promotion, planning, execution or any other part of the event. There are a few individuals who work for both Sandman and Liquidity, but none of them were ever given the authority to involve Liquidity in the event.

25. Jordan Breslauer was an intern at Liquidity. However he was never given the authority to send the email attached to the Cavanaugh Decl., as Exhibit A or to represent that Liquidity was ever involved with the event.

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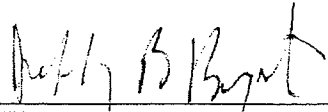
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 26, 2012 in Phoenix, Arizona.

  
\_\_\_\_\_  
JEFFREY BOGATIN

## Exhibit A

# RICHARD

AVOCATS

Rue du Petit-Chêne 18  
Case postale 7296  
1002 Lausanne

TEL +4121 320 50 61  
FAX +4121 320 53 30  
etude@richardlaw.ch

Lignes téléphoniques  
09 H 00 – 12 H 00  
14 H 00 – 17 H 00

**PHILIPPE RICHARD**  
DOCTEUR EN DROIT  
ANCIEN BÂTONNIER

**PAUL MARVILLE**  
DOCTEUR EN DROIT

World Championship of Ping Pong  
« worldchampionshipofpingpong.com »  
12 East 52nd Street, 4th Floor  
10022 New York  
New York  
USA

+by email

Lausanne, 3 February 2011 / ph

→ Arthur Nazarian, Director of Public Relations  
anazarian@worldchampionshipofpingpong.com  
→ Bryan Ciambella, Director of Sponsorship  
bciambella@worldchampionshipofpingpong.com

## **“World Championship of Ping Pong”, February 7-8th, 2011 in Las Vegas, USA**

*Cease and Desist*

Sirs,

I represent the International Tennis Table Federation (ITTF), domiciled chemin de la Roche 11, 1020 Renens, Switzerland, which is the owner of all intellectual property rights related to the sport of table tennis. My client is also the only entity authorized to organize the official World Championship of table tennis worldwide.

It has come to my client's attention that "worldchampionshipofpingpong.com" will organize a **“World Championship of Ping Pong”** on February 7 and 8<sup>th</sup>, 2011 in the Las Vegas Hotels, Palm Casino Resort, Pearl Theater in Las Vegas, USA and that this championship will be broadcasted on Fox Sports.

The only entity able to use the term “World Championship” in relation to the sport of table tennis or ping pong, as you call it, is ITTF.

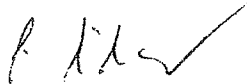
Therefore, by using the term “World Championship” in relation to the term “ping pong”, you create a risk of confusion with my client and you are infringing its rights.

My client is prepared to settle this matter on an amicable basis, provided that you voluntary withdraw the term “World Championship” from the name of your competition on any support, including on Internet, letter-head, or any other kind of material.

We look forward to receiving your confirmation **by February 4<sup>th</sup>, 2011**. If I do not hear from you by then, I shall have no other alternative than to advise my client to initiate legal proceedings against you.

My client reserves all rights.

Yours sincerely,

  
Philippe Richard, av.

Please, find enclosed/attached my power of attorney

AVOCATS AU BARREAU - MEMBRES DE L'ORDRE DES AVOCATS VAUDOIS ET DE LA FÉDÉRATION SUISSE DES AVOCATS

PH. RICHARD - CCP 10-30557-9 - TVA N° 262 325



## ORDRE DES AVOCATS VAUDOIS PROCURATION

Le/la soussigné/e, ITTF, chemin de la Roche 11, 1020 Renens / Lausanne, Switzerland

déclare donner mandat à titre individuel à Me Philippe Richard, avocat, case postale 7296, à 1002 Lausanne, membre de l'Ordre des avocats vaudois, aux fins de le/la représenter et d'agir en son nom contre worldchampionshipsofpingpong.com

La présente procuration comporte les pouvoirs de faire tous actes jugés utiles à l'accomplissement du mandat, en particulier d'agir par toutes voies amiables ou judiciaires pour le compte du mandant et de le représenter valablement devant toutes juridictions civiles, pénales, administratives ou arbitrales, ainsi qu'auprès des autorités de poursuites et des administrations, de rédiger toutes procédures, prendre toutes conclusions, résister à toutes demandes, recourir à toutes juridictions ou autorités contre tous jugements, prononcés ou sentences arbitrales, plaider, transiger, passer expédient, se désister, signer un compromis arbitral, faire exécuter tous jugements, déposer ou retirer toutes plaintes ou dénonciations pénales, requérir tous séquestres, poursuites ou faillites, recevoir tous paiements et en donner valablement quittance.

Sous sa responsabilité, le mandataire peut se faire remplacer, en particulier par les associés, collaborateurs et stagiaires de son étude.

La soussignée déclare élire / ~~ne pas élire~~ (biffer ce qui ne convient pas) domicile en l'étude du mandataire, y compris aux fins de notification des citations à comparaître personnellement. Le mandant domicilié hors du canton de Vaud prend note qu'en cas de résiliation du mandat, il pourra être réputé avoir élu domicile au greffe de la juridiction saisie.

Le mandant s'engage à verser au mandataire toutes provisions nécessaires à l'exécution du mandat. Il s'oblige à rembourser tous frais avancés par le mandataire et à acquitter ses honoraires et déboursés.

Le présent mandat peut être résilié par chacune des parties.

A l'expiration d'un délai de dix ans dès l'envoi de son compte final, le mandataire sera en droit de détruire les pièces du dossier.

Pour tous différends ou litiges qui résulteraient du présent mandat, le mandant déclare accepter expressément la compétence exclusive des tribunaux du domicile du mandataire et l'application du droit suisse et du droit vaudois.

Ainsi fait à Offana, le 2 Février 2011

A. SHARADA

## Exhibit B

**RICHARD**

AVOCATS

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1002 LausanneTEL +4121 320 50 61  
FAX +4121 320 53 30  
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09 H 00 – 12 H 00  
14 H 00 – 17 H 00PHILIPPE RICHARD  
DOCTEUR EN DROIT  
ANCIEN BÂTONNIERPAUL MARVILLE  
DOCTEUR EN DROIT**Fox Sports Net**  
1440 S Sepulveda Blvd  
Los Angeles  
CA 90025  
USA

Lausanne, 3 February 2011 / ph

+ by e-mail Chris.Bellitti@foxcable.com  
+ by fax (001) 310-969-5698 (tel. 001 310-444-8100)**"World Championship of Ping Pong", February 7-8th, 2011 in Las Vegas, USA***Cease and Desist*

Sirs,

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The only entity to be able to use the term "World Championship" in relation to the sport of table tennis or ping pong, as you call it, is the ITTF.

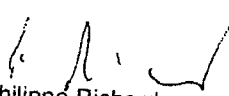
Therefore, by using the term "World Championship" in relation to the term "ping pong", you create a risk of confusion with my client and you are infringing its rights. Moreover, your coverage constitutes an act of unfair competition. You have already been advised by the TV rights holders TMS International acting on behalf of the ITTF for media commercial matters.

My client is prepared to settle this matter on an amicable basis, provided that you voluntarily withdraw the term "World Championship" from the name of your competition on any support, including on Internet, letter-head, or any other kind of material.

We look forward to receiving your confirmation by February 4<sup>th</sup>, 2011. If I do not hear from you by then, I shall have no other alternative than to advise my client to initiate legal proceedings against you.

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Etude Richard Avocats

13:24:28

03-02-2011

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## RICHARD

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Palm Casino Resort  
Pearle Theater  
4321 West Flamingo Road  
Las Vegas, Nevada 89103  
USA

Lausanne, 3 February 2011 / ph

+ by fax (001) 702-942-8050

**"World Championship of Ping Pong", February 7-8th, 2011 in Las Vegas, USA**

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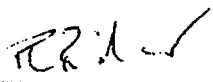
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